

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES HARRELL, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 4:14CV479 CDP
)
THE BOEING CO., et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This recently removed asbestos case is before me on my review of the file. On July 17, 2014, I ordered plaintiffs to show cause why their complaint should not be dismissed without prejudice against several defendants. In response, plaintiffs claimed that several of the defendants had been served, and they attached as exhibits returns of service. As these returns of service were not properly filed, plaintiffs were contacted by the Clerk's Office about refiling these in accordance with the local rules of this Court. In their response to the Show Cause Order, plaintiffs also stated that they were seeking alias summonses for two defendants. However, plaintiffs were informed by the Clerk's Office that they had not properly requested the issuance of alias summonses. To date, plaintiffs have failed to comply with the directives of the Clerk's Office regarding the proper filing of these documents, requiring me to send out this Order directing compliance with the Clerk's Office. This Order should be unnecessary, but let me be clear: Plaintiffs must comply with the instructions of the Clerk's Office regarding the proper filings of documents without further involvement by me.

Plaintiffs are not the only ones who have not complied with the federal and local rules. Although defendant J. P. Bushnell Packing Supply Co.'s attorney entered an appearance on

August 5, 2014 [#63], this defendant has yet to seek leave to file an answer out of time despite being served in this case on February 13, 2014. This defendant is therefore in default, as filing an entry of appearance is not the equivalent of filing a responsive pleading in federal court. I will give defendant Bushnell five days from the date of this Order to seek leave to file a responsive pleading out of time. If no such motion is filed, I expect the plaintiffs to move for entry of default and default judgment, accompanied by all necessary affidavits, exhibits, and proposed Orders.

Similarly, Defendant Whittaker, Clark & Daniels, Inc. was served on February 18, 2014, but did not bother to file any response until August 5, 2014. The response an answer, but a motion to dismiss for lack of personal jurisdiction, a defense which, under the federal rules, has been waived for failure to timely assert it. See Fed. R. Civ. P. 12(b)(1). Defendant filed no motion seeking leave to file its late responsive pleading. Despite these multiple pleading deficiencies, the Court **in this one instance only** will construe defendant Whittaker's motion to include a request for leave to file out of time, and will allow the motion to be filed so the court can consider it on the merits. Plaintiffs shall file their response to the motion to dismiss by **August 25, 2014. No reply brief is permitted absent further Order of this Court.**

All counsel are notified that the Court expects strict compliance with the Federal and Local Rules of Civil Procedure in the future, and any untimely motions filed without an appropriate motion for leave will be summarily denied. Likewise, any motions filed without the required supporting memorandum of law will be summarily denied.

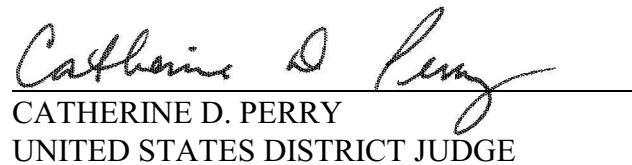
Finally, given the age of the case and the numerous defendants, the Court would like plaintiffs to file a status report which sets out the progress of this case to date, the nature and

extent of any discovery conducted in state court, and what, if any, additional discovery is required before this case is referred to mediation. Additionally, if this case was subject to any specific procedural or substantive requirements in state court due to the nature of the case, plaintiffs shall set out what those requirements were and provide a copy to the Court for review. Once plaintiffs file their status report, the Court will determine whether to refer this case to mediation immediately or to set a scheduling conference.

Accordingly,

IT IS HEREBY ORDERED that plaintiffs shall file a status report and comply with the other provisions of this Memorandum and Order as set out above by August 25, 2014.

IT IS FURTHER ORDERED that defendant Bushnell shall either seek leave to file a responsive pleading out of time within five (5) days of the date of this Order, or plaintiffs shall move for entry of default and default judgment as set out above by August 25, 2014.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 12th day of August, 2014.